

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

PERCY PEREZ,

Plaintiff,

21cv0332

ELECTRONICALLY FILED

v.

SCI FAYETTE SUPER. M. CAPOZZA
(*JOHN DOE*), et al.,

Defendant.

Memorandum Order

The Complaint in the above captioned case was filed on March 25, 2021, and was referred to United States Magistrate Judge Lisa Pupo Lenihan for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Local Rules of Court 72.C and 72.D.

The Magistrate Judge's Report and Recommendation ([Doc. 123](#)) filed on August 21, 2023, recommended that the Motion for Summary Judgment be granted in part and denied in part as more fully set forth therein. Service was made on Plaintiff via U.S. First Class Mail and on all counsel of record via CM/ECF. In the Report and Recommendation, the parties were informed that in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1)(B) and (C), and Rule 72.D.2 of the Local Rules of Court, that the parties had fourteen (14) days to file any objections (and unregistered users had seventeen (17) days to file objections). No objections have been filed to the Report and Recommendation to date.

After review of the pleadings and documents in the case and pending Motion/Response, together with the Report and Recommendation, the following Order is entered:

It is hereby ordered that Defendants' Motion for Summary Judgment ([Doc. 107](#)) be granted in part and denied in part. Summary Judgment is denied as to Plaintiff's Eighth Amendment claims for excessive force and cruel and unusual punishment against Defendants McIntyre, Meese, Newman, Gray, Sheetz, Pletcher, Weekly, Barkley, Halkias, Walters, and Shanaberger. Summary judgment is granted in favor of all Defendants on any deliberate indifference claim Plaintiff may now be arguing. Summary judgment is denied on Plaintiff's supervisory liability claim against Defendants Rhodes and Newman and granted on that claim in favor of Defendants House, Allen, and Barnacle. Summary judgment is granted as to Plaintiff's concealment claim against Defendants Rhodes, Newman, House, Allen, and Barnacle. Defendants' motion for summary judgment as to Defendant M. Capozza is denied as moot.

In accordance with the prior Order of the Magistrate Judge (Doc. 122), now that Summary Judgment has been denied on certain claims, the Magistrate Judge will undertake to attempt to find counsel to represent Plaintiff on a pro bono basis. Should that endeavor prove unsuccessful, Plaintiff shall be prepared to promptly try his case before the undersigned.

IT IS FURTHER ORDERED that the Report and Recommendation ([Doc. 123](#)) of Magistrate Judge Lenihan dated August 21, 2023, is adopted as the opinion of the Court.

SO ORDERED this 22nd day of September, 2023.

s/Athur J. Schwab
Arthur J. Schwab
United States District Judge

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